



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

CRS

Docket No: 6804-99

12 April 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) 10 U.S.C. 1552
(b) Department of Defense Memorandum of 13 August 1971

Encl: (1) DD Form 149 w/attachments
(2) Case Summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Navy, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected to show a more favorable type of discharge than the undesirable discharge issued on 3 October 1969.

2. The Board, consisting of Mr. Pfeiffer, Mr. Ivins, and Ms. LeBlanc, reviewed Petitioner's allegations of error and injustice on 5 April 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although it appears that enclosure (1) was not filed in timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner enlisted in the Navy on 28 December 1967 at age 19. At that time he had completed ten years of formal education.

d. Petitioner served without incident until 11 August 1969, when he was convicted by a summary court-martial of an unauthorized absence of five days.

e. On 9 September 1969 Petitioner made a sworn statement to an agent of the Naval Investigative Service that he had used marijuana, LSD, and other drugs.

f. On 16 September 1969 the commanding officer recommended Petitioner be separated with an undesirable discharge by reason of unfitness due to drug abuse. After review by the discharge authority, the recommendation for separation was approved. He received the undesirable discharge on 3 October 1969.

g. Reference (b), the Laird Memorandum, directed that administrative discharges under other than honorable conditions, issued solely on the basis of personal use of drugs, or possession of drugs for the purpose of such use, be reviewed for recharacterization. Under that policy, each Secretary of a military department is authorized to issue a discharge under honorable conditions upon establishment of facts consistent with this policy. The policy was applicable only to discharges which were executed on or before 7 July 1971, or issued as a result of a case in process on or before 7 July 1971.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. In this regard, the Board especially notes the provisions of reference (b). That reference may not, by its terms, apply to Petitioner's case because his service would have been characterized on the basis of the entire record, which included conviction by a summary court-martial of an unauthorized absence of five days. Therefore, characterization would not have been based solely on drug use. However, the Board also notes that Petitioner's admission of drug use was clearly the primary basis for characterization since the only other adverse action of record was the summary court-martial for a relatively minor offense. Additionally, Petitioner's admitted drug use was the only stated reason for discharge. Although the Board concludes that Petitioner's case may not fall within the four corners of reference (b), recharacterization would be consistent with the spirit of the provisions of that reference. Therefore, the Board concludes that the discharge should be recharacterized to general.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was issued a general discharge by reason of unfitness on 3 October 1969 vice the undesirable discharge actually issued on that date.

b. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

c. That, upon request, the Veterans Administration be informed that Petitioner's application was received by the Board on 1 November 1999.


4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFETTER
Executive Director